

**IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA**

Civil Writ Petition No.516 of 2001.

Judgment reserved on:15.12.2006.

Date of decision:03.01.2007.

Mangat Ram & Another. Petitioners

Versus

State of H.P. & Others. Respondents.

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?¹

For the Petitioners: Mr.Ajay Sharma, Advocate.

**For the Respondents: Mr.Rajan Dewan, Additional
Advocate General.**

Dev Darshan Sud, J.

The petitioner has approached this Court under Article 226 of the Constitution of India praying that the representation which has been made by the petitioners to the Authorities requesting for re-settlement of the villages, should be considered and resettlement ordered.

According to the petitioners, they are the right holders in the village Katohar Kalan, Tehsil Amb, District Una, H.P., which was brought under settlement operations under the H.P.Land Revenue Act in the year 1985-86. According to the petitioners, during the settlement operations in the village, the

¹ *Whether reports of Local Papers may be allowed to see the judgment?*

field staff deputed for the purpose, prepared wrong settlement records with the result that the possession and ownership of the entire village was disturbed as it did not depict the correct position on the spot. The petitioners further allege that a state of affairs was reached when even the Divisional Commissioner, Kangra Division, held that the Authorities should seriously reconsider the re-settlement of the entire area. The petitioners contend that the conversion table which has been prepared and filed as Annexure P-5 with the writ petition, is prima facie wrong and has become the cause of stiff amongst villagers. According to the petitioners, a bare glance on the table of conversion would show that it is absurd and cannot be sustained. For instance conversion of 209 Karam is 298 Meters and 202 Karam is 301 Meters.

In reply to the writ petition, the respondents submit that the order of the Collector was considered by the Divisional Commissioner vide Annexure P-4, it was set aside and the case was remanded for decision afresh. The matter is still under consideration of the Settlement Tehsildar, Una. According to the interim report, submitted by him, resettlement is sought due to encroachment of Government land after settlement in a large scale by the residents of village, as a means to protect illegal encroachments by the villagers.

I have heard learned counsel appearing for the parties. The petitioners aver that they have been authorized by the Gram Panchayat to institute the present petition on behalf of all the villagers. The order which has been passed by the Divisional Commissioner is quite revealing and supports the stand of the petitioners. Interestingly, in paragraph-7 of his order at Annexure P-4, he holds that the order of corrections which has been passed or proposed by the settlement staff as a consequence of a Civil Suit will not serve the purpose. He further holds:

"While making these proposals which is a sort of window dressing by the Settlement staff, no enquiries have been done from the villagers and they do not appear to have been associated. No notice has been issued to the appellants to present their case before passing the said order. It is basic principle of natural justice that no order can be passed adversely affecting a person without affording him opportunity of being heard. Therefore, the order of the learned Collector is hereby set aside and the case is remanded back for fresh decision after affording opportunity of hearing to all the persons concerned. Since there are large number of representations and even village resolution for having a fresh settlement in the area, the Settlement Collector should examine the matter with compassion and if required

fresh Settlement may be held in the village."

Obviously, when the Divisional Commissioner was considering the matter, he has gone through the record and found that such record is not in consonance with the ground realities. Even in the interim report, as filed with the reply of the respondents, it has been submitted by the Tehsildar that no resettlement is required. In the same breath he says that so far the spot inspection of the village is concerned, there is crop standing on the field and therefore, the inspection of the spot is impossible at that particular stage. In case a spot visit was required, it is not understood as to how and on what basis he has made the observation that no resettlement is required. On the other hand, the stand taken by the respondents that no resettlement should be ordered because the villagers have encroached upon the land of the Government, I do not find any logic in this stand of the respondents. Rather, if there is a large scale encroachment on the spot, resettlement would be required to detect such encroachments and to eject these encroachers and not to protect. Nothing seems to have been done from 21.4.2001 till date.

There are a number of estate holders in the village who are required to be heard before any order, affecting their rights, is passed, which does

not mean that the state of affairs as existing and as revealed from the records of the respondents can be allowed to continue. The record of rights, as the presumption of truth attached to them, over a period of time, attains finality which is used by the Courts of law for settlement of property disputes. The duties for preparation, maintenance of record of rights under the H.P. Land Revenue Act is a solemn statutory function which cannot be left at the whims and pleasure of the field staff. In these circumstances, it is directed that respondents No.2 and 3 should examine the entire record of settlement of village Katohar Kalan, Tehsil Amb, District Una, more especially, in the light of the observation made by the Divisional Commissioner. The respondents are directed to hear the petitioners and also the other villagers with respect to their grievances. For this purpose if the number of persons affected is very large, personal hearing, of-course, would not be possible. Representations from all the affected parties should be received and examined. Needless to say, that the possession of the encroachers would not be legalized either under the garb of resettlement or the existing record as they exist. This is not to say that this Court has given its seal of approval on the record as they exist. It is directed that the entire exercise should be completed by the respondents within a period of six months from

today after giving everybody an opportunity of being heard or making their representations as deemed fit and proper. Any decision which is taken should be well reasoned and supported by material on the record. In case the respondents come to the conclusion that the resettlement is required, such action will be initiated by the respondents in accordance with law. The writ petition is, accordingly, disposed of. Liberty is reserved to the parties to approach this Court in case of any difficulty. Further liberty reserved to the petitioners to approach this Court in case the decision arrived at by the respondents is adverse to their interest.

January 3, 2007.
(aks)

(Dev Darshan Sud)
Judge.